

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EMANUEL LEONARD FINCH,

Plaintiff,

Case No. C21-5075-TSZ-MLP

V.

ORDER TO SHOW CAUSE

PIERCE COUNTY, *et al.*,

Defendants.

14 Plaintiff Emanuel Finch is a state prisoner who is currently confined at the Airway Heights
15 Corrections Center in Airway Heights, Washington. Plaintiff initiated this civil action in Pierce
16 County Superior Court in December 2020 to challenge legal financial obligations imposed as a
17 part of a criminal judgment and sentence entered in that court in June 2011. (See Compl. (Dkt. #
18 1-2) at 4-5, 13.) Specifically, Plaintiff challenges the \$1,500 assessed by the trial court for court-
19 appointed attorneys' fees on the grounds that the fees were assessed in violation of state and
20 federal law. (See *id.* at 5, 13.) Plaintiff complains that Defendants "sued" him for the fees
21 without his knowledge and that the fees were awarded without providing him a jury trial. (See
22 *id.*) Plaintiff claims that Pierce County, the Department of Assigned Counsel, and his appointed

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1 attorney, K. Richard Whitehead, are not entitled to the \$1,500 in fees because counsel's
2 representation of Plaintiff was deficient. (*Id.*)

3 Defendants removed the case to this Court in January 2021. (Dkt. # 1.) Defendants
4 asserted in their notice of removal that this Court has original jurisdiction of this civil action
5 under 28 U.S.C. § 1331, and that removal was appropriate under 28 U.S.C. § 1441 because the
6 case arises under 42 U.S.C. § 1983. (*Id.*) Defendants filed with their notice of removal a
7 statement of related cases indicating that this case is related to *Finch v. Whitehead, et al.*, C19-
8 5675-JLR, a case which was pending at the time of removal but has since been closed. Plaintiff,
9 who is proceeding *pro se* in this action, did not object to removal.

10 On February 4, 2021, Defendants filed a motion to dismiss this action in which they
11 assert that this Court lacks subject matter jurisdiction over Plaintiff's constitutional claims
12 relating to the legal financial obligations imposed by the trial court, and that Plaintiff's claims
13 fail as a matter of law. (See Dkt. # 6 at 1, 3-6.) With respect to the latter assertion, Defendants
14 present the following specific arguments: (1) Defendant "Department of Assigned Counsel" is
15 not an entity capable of being sued; (2) the applicable state and federal statutes of limitations
16 have expired; (3) Plaintiff has engaged in impermissible claim splitting; (4) Plaintiff fails to meet
17 the pleading requirements for a claim under 42 U.S.C. § 1983; (5) Plaintiff fails to allege
18 sufficient facts to prove the required elements of a state law negligence claim; and, (6) Plaintiff
19 failed to exhaust his administrative remedies. (*Id.* at 6.)

20 While Defendants construe Plaintiff's complaint as asserting claims under § 1983 as well
21 as state law negligence claims, this Court reads Plaintiff's complaint as presenting only a
22 challenge to the imposition of legal financial obligations in the amount of \$1,500. Plaintiff does
23 identify in his complaint federal constitutional infirmities in trial counsel's performance, but he

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1 does not seek damages for the alleged constitutional violations, nor does he seek release from
2 custody as Defendants incorrectly represent in their motion to dismiss. (See Dkt. # 6 at 3.)
3 Plaintiff merely seeks the return of the \$1,500 which he believes was improperly awarded given
4 the alleged deficiencies in counsel's performance and given that he was not provided notice and
5 an opportunity to be heard before the award was made. (See Dkt. ## 1-2.) Documents submitted
6 by Plaintiff in response to Defendants' pending motion to dismiss appear to confirm this
7 interpretation of Plaintiff's pleading. (See Dkt. ## 11, 13.)

8 Given that this action appears to have been removed on the basis that Plaintiff asserted in
9 his complaint claims arising under § 1983, and given that Defendants appear to acknowledge in
10 their motion to dismiss that this Court lacks jurisdiction over the claim it appears Plaintiff
11 intended to assert, the Court deems it necessary to hear from Defendants on the propriety of the
12 removal before it considers Defendants' motion to dismiss.

13 Accordingly, the Court hereby ORDERS as follows:

14 (1) Defendants shall SHOW CAUSE within ***thirty (30) days*** why the Court should
15 not remand this matter to the Pierce County Superior Court pursuant to 28 U.S.C. § 1447(c) for
16 disposition of the state law issue asserted by Plaintiff in his complaint.

17 (2) Defendants' motion to dismiss (dkt. # 6) is STRICKEN from the Court's calendar
18 subject to re-noting once Defendants have responded to this Order.

19 (3) Plaintiff's pending motion for joinder (dkt. # 7) is DENIED. Plaintiff seeks to join
20 as a Plaintiff in this case a state statute, RCW 36.26.070. (*Id.*) Rule 20 of the Federal Rules of
21 Civil Procedure permits "persons" to join in one action as plaintiffs if certain conditions are met.
22 A state statute is not a person and therefore is not properly joined as a Plaintiff.

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1 (4) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for
2 Defendants, and to the Honorable Thomas S. Zilly.

3 DATED this 12th day of April, 2021.

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6 MICHELLE L. PETERSON
7 United States Magistrate Judge
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